CHAN AH MOI @ CHAN KIM MOY

v.

PHANG WAI ANN

HIGH COURT MALAYA, JOHOR BAHRU
DATO' HJ. ABDUL MALIK BIN HJ. ISHAK J
[DIVORCE PETITION NO. 33-24-1994]
28 JUNE 1995

FAMILY LAW: *Restraining order - Application for an in injunction against molestation - Law Reform (Marriage and Divorce) Act 1976 (Act 164), s. 103 - Whether pre-requisites satisfied - Principles to be applied.*

FAMILY LAW: *Exclusion order - Whether provision for an exclusion order available in Malaysia - Civil Law Act 1956, s. 3(1) - Whether a lacuna in the law - British Domestic Violence and Matrimonial Proceedings Act, 1976 ss. 1(1)(c), (2) - Basis for order to be granted - Whether basis satisfied.*

WORDS & PHRASES: *"molestation" - Law Reform (Marriage & Divorce) Act 1976, s. 103.*

WORDS & PHRASES: *"are living" - British Domestic Violence and Matrimonial Proceedings Act 1976, s. 1(2).*

The petitioner was married to the respondent on 4 October 1963 according to Chinese customary rites and have seven children by the marriage. Due to marital problems, the petitioner and the respondent decided to live separately but despite this, the petitioner continued to abuse the respondent. It was deposed by the petitioner in her affidavit that the respondent had repeatedly hit her head with a wooden stool resulting in a deep wound on her head which necessitated medical attention. Later, she was again attacked by the respondent, this time with a knife which caused injuries to the scalp, face and right eye of the petitioner. These injuries could have been fatal if not for the intervention of a police officer. Pursuant to the attack, a police report was filed, and an investigation commenced, with the respondent later charged, convicted and sentenced for an offence under s. 326 of the Penal Code. He was still serving his sentence when the *ex-parte* summons-in-chambers was heard by the Court, whereby the petitioner prayed for a restraining order against molestation and an exclusion order. In the meantime, the petitioner filed for dissolution of her marriage.

Held:

[1] Before s. 103 of the Law Reform (Marriage and Divorce) Act 1976 can be invoked, it must be shown that a petition has been filed in proceedings for dissolution of the marriage or if a petition has not been filed, the petitioner must give an undertaking to file a petition within the time frame as set by the Court. The applicable principles are those enunciated in *Horner v. Horner* where it was stated that the husband's conduct did not fall within s. 16(2) of the Domestic Proceedings and Magistrates' Courts Act, 1978 (UK) (reference can be made to s. 6(a) to (f), (3) and (4) Domestic Violence Act 1994, which failed to assist the petitioner) but fell within the wider non-molestation provisions in the British Domestic Violence and Matrimonial Proceedings Act 1972 (reference can be made to s. 103 Law Reform (Divorce And Marriage) Act 1976). Section 1(1) of the DBVMPA allows the Court to make an order restraining the other party to a marriage from molesting the applicant (Section 103 of the Law Reform (Marriage And Divorce) Act 1976 allows the Court to make an order to refrain

the other party to a marriage from acts of molestation). Such an order is not restricted to physical harm or threats of such harm. It was said that even psychological harm to the applicant is included and this will include pestering, causing trouble, vexing, annoying and putting to inconvenience.

[2] There is no provision in the Law Reform (Marriage and Divorce) Act 1976 for an exclusion order but by s. 3(1) of the Civil Law Act 1956, ss. 1(1)(c) and 1(2) of the BDVMPA are applicable in Malaysia and allows the Court to exclude a party who have been living together as husband and wife from the matrimonial home. However, the petitioner had been living separately from the respondent for eight years prior to the near fatal attack. Be that as it may, from the authorities the duration of the exclusion orders can be said to be temporary in nature, and can be discontinued as soon as it clear that it is no longer needed. Though the order may be a draconian remedy yet it is a necessary evil. When the respondent is released from prison he still has a house to go to.

[Application allowed].

Cases referred to:
Syarikat Telekom Malaysia Bhd v. Business Chinese Directory Sdn. Bhd. [1993] 2 AMR 37: 2154 ***(refd)***
Vaughan v. Vaughan [1973] 3 ALL ER 449 ***(refd)***
George v. George [1986] 2 FLR 347
Johnson v. Walton [1990] 1 FLR 350 ***(refd)***
PP v. Seridaran [1984] 1 MLJ 141 ***(refd)***
Horner v. Horner [1982] 2 WLR 914 ***(foll)***
Bagher Singh v. Chanan Singh [1961] MLJ 328 ***(foll)***
Warren v. Tay Say Geok & Ors. [1965] 1 MLJ 44 ***(refd)***
Davis v. Johnson [1979] AC 264 ***(refd)***
Davis v. Johnson [1978] 1 All ER 1132 ***(refd)***
Hopper v. Hopper [1979] 1 All ER 181 ***(refd)***

Legislation referred to:
Civil Law Act 1956 (Act 67), s. 3(1)
Criminal Procedure Code
Domestic Violence Act 1994, ss. 2, 3, 4, 5, 6(a) - (f), (3), (4), 13
Law Reform (Marriage And Divorce) Act 1976 (Act 164), ss. 4(1), (2), (3)(b), 103
Penal Code, s. 326
British Domestic Violence and Matrimonial Proceedings Act 1976, (UK), ss. 1(1)(a), (c), (2)
Domestic Proceedings and Magistrates' Courts Act 1978, (UK), s. 16(2)

Other sources referred to:
The Britannica World Language Edition of The Oxford Dictionary
Pocket Oxford Dictionary of Current English, F.G. Fowler & H.W. Fowler, 4th Edn.
Family Law, P.J. Pace, p. 105

For the petitioner - Asha Pereira; M/s. Soo & Associates

JUDGMENT

Hj. Abdul Malik bin Hj. Ishak J:

This case is yet another example of how a battered housewife goes through life in a nightmare; the nightmare of being brutally assaulted by her own husband. Marriages are said to be made in heaven, with lots of love and affection and, in the context of this case, it culminated into violence.

The petitioner here was married to the respondent on 4 October 1963 according to Chinese customary rites (see encl. 9, Exhibit "CAM 1" depicting the marriage photograph and the "marriage certificate" in Chinese character not translated for the benefit of the Court and would certainly go against the decision of *Syarikat Telekom Malaysia Bhd v. Business Chinese Directory Sdn. Bhd.* [1993] 2 AMR 37: 2154). Be that as it may, the marriage must have been a happy one because the petitioner bore seven children, four boys and three girls whose ages ranged from sixteen to thirty years of age at the time of filing the affidavit in encl. 9. Things got out of hand. The respondent behaved unreasonably to such an extent that the petitioner could not stand the sight of him. They decided to live separately at two separate residences for eight (8) solid years. The petitioner stayed at house No. 26, Lorong Cengal, Taman Kuso, 81900 Kota Tinggi, Johor while the respondent stayed at house No. 19, Jalan Cengal, Taman Kuso, 81900 Kota Tinggi, Johor. In fact, they both stayed in the same housing estate but in separate houses. Despite the separation, the petitioner continued to be abused by the respondent.

The petitioner deposed in her affidavit in encl. 9 that sometime in 1991, the respondent repeatedly hit her head with a wooden stool and as a result of which she sustained a deep wound on her head which necessitated hospitalisation at Kota Tinggi General Hospital. The doctors there had to stitch her injuries.

On 19 August 1992 at about 10.40 p.m. at a taxi stand, the respondent attacked the petitioner with a "double lion" knife measuring 13 inches in length and 4 inches in width causing injuries to the scalp, face and right eye of the petitioner. These injuries could have been fatal. For the petitioner, this must be an instance of extreme violence of a horrifying nature. The timely arrival of Corporal 98711 Mohamad Yusof must have averted possible death. That Corporal witnessed the brutal attack and lodged a police report to that effect, *vide* Kota Tinggi police report number 2339/93. Dr. Norlia Abdullah, the medical officer of Kota Tinggi General Hospital examined the petitioner and in her report she listed the following grievous injuries sustained by the petitioner:

Scalp	-	2 deep wounds at right pariental region 6 c.m and at left pariental region 6 c.m.
Face	-	12 c.m. deep wounds across right eye, root of nose and lateral part right zygomatic area.
Right eye	-	corneal laceration, pupil not constricting to light.
Superficial wound 6 c.m lateral part right upper arm.		
X-ray	-	compound fracture vertex and nasal bone.
Diagnosis :		Compound fracture vertex and nasal bone with traumatic injury in the right eye.

The police investigated the report lodged by Corporal Yusof and in her further affidavit at encl. 14 the petitioner deposed that the respondent was charged in the Sessions Court, Kota Tinggi and convicted for an offence under s. 326 of the Penal Code and was sentenced to 4½ years' imprisonment with effect from the date of arrest (19 August 1992). Clearly that criminal prosecution must be related to the brutal attack on the petitioner at the taxi stand. Currently, the respondent is serving his term of imprisonment at the Simpang Rengam prison and he is expected to be released on 19 August 1995.

The petitioner further deposed in her affidavit in encl. 9 that as a result of the several injuries sustained by her as enumerated in Dr. Norlia Abdullah's medical report, she suffered tremendous pain and suffering compounded by disabilities and residuals in the form of permanent scars and deterioration of her vision in her right eye. She feared for her safety

and this fear was quite imminent as her husband, the respondent, would soon be released from Simpang Rengam prison and she believed that there was every likelihood of a repetition of that brutal attack experienced by her at the taxi stand. She prayed in her amended *ex parte* summons-in-chambers (encl. 12 at Exhibit "AP1") for the following orders:

(1) that the respondent be restrained from molesting the petitioner; and

(2) that the respondent be excluded from the matrimonial home or a part of the matrimonial home or from a specified area in which the matrimonial home is included.

The matrimonial home was said to be at house No. 26, Lorong Cengal, Taman Kuso, 81900 Kota Tinggi, Johor.

In the meantime, the petitioner has since filed for dissolution of her marriage, for custody of her youngest child and, lastly, that the respondent not to be given reasonable access to the said child (encl. 2 para. 14).

I shall now proceed to discuss the orders which the petitioner sought for in encl. 12 at Exhibit "AP1".

That the respondent be restrained from molesting the petitioner.

This is in the nature of a non-molestation order. Being married in accordance to the Chinese customary rites and not registering that marriage would not bar the petitioner from seeking refuge under the Law Reform (Marriage And Divorce) Act 1976 (Act 164) ("Act") as she was married on 4 October 1963. That this is so is clearly reflected in s. 4(1) of the Act which enacts that:

> Nothing in this Act shall affect the validity of any marriage solemnised under any law, religion, custom or usage prior to the appointed date.

And the petitioner's position under the Act is further fortified by the deeming provision that appears in s. 4(2) of the Act which enacts in no uncertain terms that:

> Such marriage, if valid under the law, religion, custom or usage under which it was solemnised, shall be deemed to be registered under this Act.

Now, since the petitioner has filed for dissolution of her marriage presumably under s. 4 (3)(b) of the Act, it follows that she can seek refuge under s. 103 of the Act which enacts that:

> The Court shall have power during the pendency of any matrimonial proceedings or on or after the grant of a decree or divorce, judicial separation or annulment, to order any person to refrain from forcing his or her society on his or her spouse or former spouse and from other acts of molestation.

and by very words employed in that section, the petitioner seeking protection of this Court from the violent respondent is entitled to obtain, what is now known as, an injunction against molestation. It is germane to mention here that certain prerequisites must be satisfied before s. 103 of the Act can be invoked. These pre-requisites may briefly be stated as follows:

(1) that a petition has been filed in proceedings for dissolution of the marriage;

(2) if a petition has not been filed, the petitioner gives an undertaking to file a petition within the time frame as set by the Court.

Unfortunately, the word "molestation" is not defined in the Act. *The Britannica World Language Edition of The Oxford Dictionary* defines "molestation" as:

> the action of molesting or condition of being molested; annoyance, disturbance, vexation

Whereas the *Pocket Oxford Dictionary of Current English* compiled by F.G. Fowler & H.W. Fowler, 4th Edn. defines "molestation" simply as "troublesome". Davies LJ, in *Vaughan v. Vaughan* [1973] 3 All ER 449 CA, referred to two dictionaries for the meaning of the word "molestation". His Lordship said this (p. 452) :

> According to Counsel for the husband we find two different definitions respectively in the *Concise Oxford Dictionary* and in the *Shorter Oxford Dictionary*. The former gives the meaning for 'molest' as : 'meddle hostilely or injuriously'. The *Shorter Oxford Dictionary* gives a much wider definition in these terms : 'to cause trouble; to vex; to annoy; to put to inconvenience.

George v. George [1986] 2 FLR 347 and *Johnson v. Walton* [1990] 1 FLR 350 adopted Davies LJ's approach to the meaning of "molestation" in *Vaughan v. Vaughan* (*supra*).

It is quite understandable that what goes on behind the closed doors of the matrimonial home is anyone's guess. But the respondent here who is currently serving his term in Simpang Rengam prison must be enraged by his conviction and sentence that he would probably seek revenge upon his release on 19 August 1995. What must the petitioner do to protect herself ?

It is clear that the general criminal law is inadequate to deal with domestic violence. The criminal law moves slowly, too slow for comfort. Battered housewives would simply suffer at the hands of their outraged husbands. There is currently no power under the criminal law to injunct errant husbands from molesting timid housewives.

Battered housewives are now a matter of grave public concern. In an apparent attempt to appease battered housewives, the Government recently legislated the Domestic Violence Act 1994 ("DVA") on 24 June 1994. The DVA was subsequently gazetted on 7 July 1994 and it became law on 8 July 1994. But unfortunately for the petitioner, the DVA in its present form would not help the petitioner at all. Domestic violence *per se* is not a specific crime in the DVA. Section 3 of the DVA shall be read together with the provisions of the Penal Code. This in turn would necessarily impede investigation as all investigations are governed by the Criminal Procedure Code ("CPC"). Thus, the police must first determine the nature of the offence before deciding on the next course of action. If the offence is non-seizable in nature, the police will conduct an investigation upon receipt of an order to investigate from the Deputy Public Prosecutor. An investigation in a non-seizable offence without an order to investigate from the Deputy Public Prosecutor would render whatever evidence collected as illegal (*PP v. Seridaran* [1984] 1 MLJ 141). Under the CPC, the police are required to conduct immediate investigations in cases of seizable offences. Taken from this angle, the DVA would be a toothless tiger. I say this because in most cases of domestic violence like punching, kicking, assaulting, etc. they would squarely fall under the category of a non-seizable offence. There is therefore no immediate need for the police to investigate unless the Deputy Public Prosecutor issues an order to investigate.

The matter is compounded further by the loose definition of "domestic violence" in s. 2 of the DVA which clearly puts it within the category of not only non-seizable but also seizable and this must surely be the restraining factor before the police investigates the case.

Perhaps the sting in the DVA is found in s. 4 where an *interim* protection order may be obtained pending an investigation. However, as explained earlier, it would be dependent on the nature of the case. If it is non-seizable, a battered housewife may be on the losing end,

she may not even be given an interim protection order by the Court. Now, even if the Court is minded to give her an interim protection order, that order shall cease to have effect upon the completion of the investigations. What good will it do to the battered housewife then? The irate husband will definitely create havoc once the *interim* protection order is lifted.

Section 5 of the DVA envisages a long term protection order where the husband is charged with a crime in circumstances that fall within the definition of domestic violence like the present case. But unfortunately, when the Sessions Court at Kota Tinggi convicted and sentenced the respondent on 7 October 1992 (see Exhibit "CAM1" of encl. 14), the DVA has not been legislated and, consequently, the Sessions Court could not resort to the DVA. Now, if the DVA were applicable to the respondent when he was first produced before the Sessions Court, the charge under s. 326 of the Penal Code levied against the respondent would bring it within the purview of "domestic violence" as defined under s. 2 of the DVA and, consequently, the protection order envisaged under s. 13 of the DVA would be applicable.

Be that as it may, without the benefit of the DVA, the petitioner must now rely on s. 103 of the Act as adverted to in the early part of this judgment to restrain the respondent from molesting her especially after he is released from prison.

It is interesting to note that the British Domestic Violence and Matrimonial Proceedings Act 1976 ("BDVMPA") especially s. 1(1)(a) thereof contains a provision restraining the other party to the marriage from molesting the applicant and for comparison it is reproduced below:

> Matrimonial injunctions in the County Court
>
> 1(1) Without prejudice to the jurisdiction of the High Court, on an application by a party to a marriage a County Court shall have jurisdiction to grant an injunction containing one or more of the following provisions, namely:
>
> (a) a provision restraining the other party to the marriage from molesting the applicant;

As to whether the petitioner would succeed in establishing molestation would depend on the facts of each particular case.

Reverting back to *Vaughan v. Vaughan* (*supra*), the facts there were that in April 1970 the wife petitioned for the dissolution of her marriage on the ground of cruelty and obtained an *interim* injunction against molestation by the husband. In May she was granted a non-molestation injunction pending suit. In August the husband was committed to prison for breach of that injunction but a month later he was released after expressing his regret and undertaking to refrain from further disobedience. In October the wife obtained a *decree nisi* and on 16 November a fresh injunction restraining the husband from molesting her. On 25 November the husband was committed for breach of that order. He was in custody from 1 to 23 December when he was released again after making an apology and giving an undertaking. On 1 January 1971 the husband was again committed for contempt. On 14 January the *decree nisi* was made absolute. On 6 April the husband was released and warned as to what would happen if he offended again but on 18 May as a result of further incidents he was committed for two months for contempt. Shortly afterwards he was sentenced to 18 months' imprisonment for burglary and other offences from which he was released on 3 June 1972. From that date until April 1973 he behaved himself. On a number of occasions in April and May however he pestered the wife to go out with him and to see him and speak to him. Early in the morning and late at night he called on her at her house and also at her place of work making a nuisance of himself to her the whole time. However, in contrast to what had happened on previous occasions, he committed no acts of violence. He knew she was frightened of him. There was

evidence from the wife's doctor that the husband's pestering had affected the wife's health. On 10 May 1973, Faulks J committed the husband to prison for contempt of the 16 November injunction - 'for a period of not less than six months less one day and he ordered the governor of the prison to safely keep (him) there for six months less one day; and he further directed that he be not at liberty to apply to the Court for an order for his release from prison before 9 November 1973'. The husband appealed contending, *inter alia*, that his conduct did not amount to molestation. On these facts, Davies LJ said:

> It seems to me that, in the circumstances of this case, taking into consideration this lady's health, of which the husband was to some degree aware, and taking into consideration the fact that he knew she was frightened of him, molestation has plainly been made out in the present case, as in substance is admitted by the husband himself in such a passage in his affidavit as that to which I have referred.

The petitioner here must surely dread the day when the respondent is released from prison; the thought of his release must have given rise to an element of impending physical violence to her. The petitioner's position here is worse off than the innocent wife in *Horner v. Horner* [1982] 2 WLR 914. There the parties to the marriage had separated. After the separation the wife complained that her husband had been harassing her in all kinds of ways, including handing her threatening letters, intercepting her on the way to the station, and so on. As a result of this, the wife successfully applied to the Magistrates' Court for an order that the husband should not use, or threaten to use violence against her. A power of arrest was attached to the order. After the order was made, however, the husband started harassing the wife in a manner which did not involve violence or the threat of violence to her. As such the wife applied to the County Court Judge for an order under the BDVMPA which gives County Court Judges wider powers than Magistrates. The County Court Judge dismissed the application stating that the wife should have gone back to the Magistrates' Court. The wife appealed. The Court of Appeal allowed the appeal on the ground that the husband's later conduct did not fall within s. 16(2) of the Domestic Proceedings and Magistrates' Courts Act 1978 but fell within the wider non-molestation provisions in the BDVMPA. Section 1(1)(a) of the BDVMPA allows the Court to make an order 'restraining the other party to the marriage from molesting the applicant'. Such an order is not restricted to physical harm or threats of such harm. It was said that even psychological harm to the applicant is included and this will include pestering, causing trouble, vexing, annoying and putting to inconvenience.

Though the facts in *Horner v. Horner* (*supra*) were fairly mild as compared to what the petitioner here had suffered at the hands of the irate respondent, yet in both cases there appears to be a similar thread that runs through them in that both parties were separated; and though *Horner v. Horner* (*supra*), turned on the scope of s. 1(1)(a) of the BDVMPA in importing culpability on the errant husband there while here the DVA cannot assist the petitioner, yet the principles enunciated in *Horner v. Horner* (*supra*) are germane and ought to apply to the petitioner here.

For the reasons adumbrated above, I ordered that the respondent be restrained from molesting the petitioner.

That the respondent be excluded from the matrimonial home or a part of the matrimonial home or from a specified area in which the matrimonial home is included.

This is in fact an exclusion order sought for by the petitioner.

There is no provision in the Act for an exclusion order. *Bagher Singh v. Chanan Singh* [1961] MLJ 328 CA, is authority for the proposition that s. 3(1) of the Civil Law Ordinance 1956 (now Act), could be invoked only where there is a lacuna in the law. That section reads as follows (this is the Civil Law Act 1956 (Act 67) the relevant parts only):

> 3(1) Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall:
>
> (a) in West Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on 7 April 1956.

And the proviso thereto reads as follows:

> Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.

The Privy Council in *Warren v. Tay Say Geok & Ors.* [1965] 1 MLJ 44 PC, held that by s. 3 of the Civil Law Ordinance 1956 (now Act), the Courts of Malaya apply the common law of England and the rules of equity as there administered save in so far as other provision is made by any written law in force in the Federation. There is a proviso that such law and rules shall be applied so far only as the circumstances of the States comprised in the Federation and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.

With these principles in mind, it is appropriate to refer to s. 1 sub-section (1)(c) and sub-section (2) of the BDVMPA and for convenience they are reproduced below :

> 1 (1) Without prejudice to the jurisdiction of the High Court, on an application by a party to a marriage a County Court shall have jurisdiction to grant an injunction containing one or more of the following provisions, namely:
>
> (c) a provision excluding the other party from the matrimonial home or a part of the matrimonial home or from a specified area in which the matrimonial home is included;
>
> (2) Sub-section (1) above shall apply to a man and a woman who are living with each other in the same household as husband and wife as it applies to a marriage and any reference to the matrimonial home shall be construed accordingly.

The words "are living" in sub-section (2) of s. 1 of the BDVMPA have been explained by Lord Denning MR, in *Davis v. Johnson* (C.A.) [1979] AC 264 at p. 275:

> To my mind these words do not present any difficulty. They are used to denote the relationship between the parties before the incident which gives rise to the application. If they were then living together in the same household as husband and wife, that is enough.

Here, the petitioner had been living separately from the respondent for eight (8) long years prior to the near fatal attack at the taxi stand. They cannot therefore be said to be living together in the same household. Be that as it may, from the authorities the duration of the exclusion orders can be said to be temporary in nature. Thus, in *Davis v. Johnson* [1978] 1 All ER 1132 at p. 1146, Lord Dilhorne described these orders as:

> the provision of immediate relief not a permanent resolution of a situation arising on the break up of a marriage.

In *Hopper v. Hopper* [1979] 1 All ER 181 at p. 185, Ormrod LJ stated that the Courts should:

a always have clearly in mind that they are dealing with the problem on a short term basis and the injunctions which are granted should be either expressly limited in some way or it should be made perfectly clear to both parties that the protection of the injunction will be withdrawn after a lapse of a reasonable time.

In *Davis v. Johnson* (*supra*), Lord Scarman stated that:

b the remedy is available to deal with an emergency ... The order must be discontinued as soon as it is clear on the application of either or both family partners, that it is no longer needed.

A book entitled *Family Law* by P.J. Pace at p. 105 contains an interesting passage on exclusion which bears repetition. The learned author there stated:

While it has been said that an injunction excluding one spouse from the matrimonial home (as opposed to one restraining molestation) is a "drastic order" (*Hall v. Hall* [1971] C.A.), it
c is recognised that it is "fair, just and reasonable" that a spouse should be excluded, the Court will so order (*Walker v. Walker* [1978] CA). In deciding whether to make such an order the Court will have regard to such matters as :

(a) the parties' behaviour;

(b) the effect on the children if exclusion is, or is not, ordered;

d (c) the personal circumstances of the person sought to be excluded;

(d) the accommodation available to the parties;

(e) the likelihood of injuries to the parties; and

(f) the parties' health.

e At the local scene, although s. 6 (a) to (f) together with sub-sections (3) and (4) of s. 6 of the DVA (which is not applicable as explained in the early part of this judgment) provide for an order excluding the errant husband from the shared residence or a specified part of the shared residence, yet such an order would be revoked if a suitable alternative residence is found for the protected person (the innocent housewife). "Alternative residence" is defined in the DVA as:

f premises or accommodation which the victim is or has been compelled to seek or move into as a result of domestic violence.

In the context of the present case, the petitioner prays that the exclusion order be handed down against the respondent in respect of house No. 26, Lorong Cengal, Taman Kuso, 81900 Kota Tinggi, Johor. Though it may appear to be a draconian remedy yet it is a necessary evil. As a wife, the petitioner's position must be distinguished from a "mistress" where the
g relationship may be said to be casual, impermanent, fleeting and secret. When the respondent is released from prison he has a house to go to. He should not be unduly worried about accommodation.

For the reasons aforesaid, I also ordered the exclusion order as prayed for by the petitioner and this was in regard to house No. 26, Lorong Cengal, Taman Kuso, 81900 Kota Tinggi,
h Johor.

i